ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	
IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNICATIONS ACT OF 1996	CC Docket No. 96-98

REPLY OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION TO PETITIONS FOR RECONSIDERATION

TELECOMMUNICATIONS
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SUMMARY

The Telecommunications Resellers Association ("TRA"), an association comprised of more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, hereby opposes, in whole or in part, petitions filed by a number of incumbent local exchange carriers ("ILECs"), including Ameritech, BellSouth Corporation, GTE Service Corporation, NYNEX Telephone Companies, SBC Communications, Inc., and the United States Telephone Association, seeking to water down the Commission's dialing parity mandates, both with respect to the timing of and procedures for implementation, to limit nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings, and to restructure the manner in which the costs of number administration are recovered. To this end, TRA offers the following:

- The Commission should decline to reconsider its number administration funding requirements. The Commission's approach to funding number administration fully satisfies the statutory competitive neutrality standard voiced in Section 251(e)(2), is consistent with other cost recovery measures adopted or proposed by the Commission and the Federal-State Joint Board in implementing the Telecommunications Act of 1996, and is both equitable and workable.

- The Commission should decline to reconsider its dialing parity mandates, concluding in so doing that (i) Section 251(b)(3) imposes on LECs the obligation to provide dialing parity to competing providers of telephone exchange service and to competing providers of telephone toll service; (ii) the Section 51.209 carrier selection requirements apply with the same force to "existing" customers as they do to "new" customers; and (iii) deployment of dialing parity should not be delayed or reduced in effectiveness simply to accommodate ILEC cost and resource concerns.

- The Commission should decline to reconsider its nondiscriminatory access requirements, concluding in so doing, that (i) Section 251(b)(3) imposes on ILECs the obligation to provide access to telephone numbers, operator services, directory assistance, and directory listings which is equal in quality to that they provide themselves; (ii) the burden of demonstrating compliance with the Commission's nondiscriminatory access requirements is properly imposed on LECs; and (iii) the timing of branding or unbranding should not be left to negotiation or arbitration and the requirement that unbranding in the event of technical infeasibility should be inviolate.

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The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.419(g) of the Commission's Rules, 47 C.F.R. § 1.419(g), hereby replies to selected petitions for reconsideration of the Second Report and Order, FCC 96-333, released by the Commission in the captioned docket on August 8, 1996.[1] Specifically, TRA will respond herein in opposition to all or part of petitions filed by a number of incumbent local exchange carriers ("ILECs"), including Ameritech, BellSouth Corporation ("BellSouth"), GTE Service Corporation ("GTE"), the NYNEX Telephone Companies ("NYNEX"), SBC Communications, Inc. ("SBC"), and the United States Telephone Association ("USTA") (collectively, the "ILEC Petitioners").

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-333 (released August 8, 1996), *pet. for rev. pending sub nom.* Bell Atlantic Telephone Companies, et al. v. Federal Communications Commission, Case No. 96-1333 (D.C. Cir. September 16, 1996) ("Second Report and Order").

I.

INTRODUCTION

An association comprised of more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members will also be among the many new market entrants that will soon be offering local telecommunications services, generally through traditional "total service" resale of ILEC and competitive LEC ("CLEC") retail service offerings or by recombining unbundled network elements obtained from ILECs to create "virtual local exchange networks."

TRA has been an active participant in this proceeding, filing with the Commission multiple rounds of comments and reply comments, oppositions to requests for stay and various *ex parte* materials. TRA has also intervened before the United States Court of Appeals for the District of Columbia Circuit in support of the Commission in the pending appeals of the Second

Report and Order, as well as before the United States Court of Appeals for the Eighth Circuit in support of the Commission in the consolidated appeals of the First Report and Order.[2]

TRA's interest in this proceeding has been, and continues to be, in securing for its members and other small to mid-sized resale carriers economically and operationally viable opportunities to compete effectively in the local and intraLATA toll markets. In furtherance of this end, TRA, in second phase comments and reply comments, urged the Commission to interpret broadly the dialing parity requirement embodied in Section 251(b)(3) of the Telecommunications Act of 1996 ("1996 Act"),[3] adopting and imposing in so doing uniform, federal rules that mandate the use and deployment of an interim "dual-PIC" and ultimately a permanent "multi-PIC" or "smart-PIC" presubscription methodology, in conjunction with customer notification, education and balloting funded by the ILECs. TRA further expressed the view that network modifications associated with the implementation of dialing parity should be treated no differently than other ILEC network "upgrades" when it comes to recovery of associated costs. Finally with respect to dialing parity, TRA endorsed the strict interpretation proposed by the Commission of "nondiscriminatory access" as it applies to telephone numbers, operator services and directory assistance and directory listings, and argued that the availability of these services for resale is an essential element of such nondiscriminatory access.

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[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 12 (released August 8, 1996), *pet. for rev. pending sub. nom.* Iowa Utilities Board v. Federal Communications Commission, Case No. 96-3321 (8th Cir. Sept. 5, 1996) ("First Report and Order").

[3] Pub. L. No. 104-104, 110 Stat. 56, § 251(b)(3), (1996); 47 U.S.C. § 251(b)(3).

With respect to number administration, TRA urged the Commission to retain its authority to set policy with respect to all facets of number administration, but to delegate to the States for action not inconsistent with the Commission's numbering administration guidelines matters involving the implementation of new area codes. In funding number administration, TRA urged the Commission to exercise the same care it had demonstrated with respect to the assessment of regulatory fees to avoid imposing a double payment burden on small resale carriers.

While not totally in accord with the Commission's interpretation and implementation of Sections 251(b)(3) and 251(e), TRA applauds the Commission for requiring all local exchange carriers ("LECs") to implement intraLATA and interLATA toll dialing parity using the "full 2-PIC" presubscription method and authorizing the States to require "multi-PIC" or "smart-PIC" presubscription methodologies, and for establishing definitive implementation schedules, as well as mechanisms and procedures for ensuring timely compliance with statutory dialing parity requirements. TRA further commends the Commission for rejecting the ILECs' unduly restrictive readings of the Section 251(b)(3) requirement that LECs permit competing providers of telephone exchange and toll service "nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings." Finally, TRA strongly endorses the Commission's conclusion that number administration funding requirements should be based on telecommunications revenues net of payments made to other carriers for telecommunications services and facilities.

Consistent with these views, TRA herein opposes attempts by the ILEC Petitioners to water down the Commission's dialing parity mandates, both with respect to the timing of, and

procedures for, implementation, and to limit nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings. TRA also opposes efforts by the ILEC Petitioners to restructure the manner in which the costs of number administration are recovered.

II.

ARGUMENT

A. The Commission Should Decline to Reconsider Its Number Administration Fund Requirements

Section 251(e)(2) requires that the costs associated with the administration of telecommunications numbering must be "borne by all telecommunications carriers on a competitively neutral basis."[4] The Commission determined that in order "[t]o fulfill the mandate of Section 251(e)(2), . . . only 'telecommunications carriers,' as defined in Section 3(44) of the 1996 Act, shall contribute to the costs of number administration . . . [and] such contributions shall be based on each contributor's gross revenues from its provision of telecommunications services reduced by all payments for all telecommunications services and facilities that have been paid to other telecommunications carriers."[5] A number of the ILEC Petitioners, including BellSouth, NYNEX, SBC and USTA, urge the Commission to reconsider this determination,

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[4] 47 U.S.C. § 251(c)(2).

[5] Second Report and Order, FCC 96-33 at ¶ 21 (footnote omitted).

recommending a variety of different number administration funding mechanisms.[6] TRA urges the Commission to deny these requests.

As the Commission correctly reasoned, "[c]ontributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers."[7] "[T]o avoid such an outcome," the Commission "require[d] all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures from all telecommunications services and facilities that have been paid to other telecommunications carriers."[8] The Commission's assessment of the equities here is squarely on point.

Reliance upon gross revenues would result in a double (or greater) recovery from resale carriers. The gross revenues of resale carriers include payments to network providers as to which such network providers would have already contributed a percentage to fund number administration. And given that larger resale carriers often provide "wholesale" services to smaller resellers, a smaller resale carrier's gross revenues could include revenues as to which multiple funding contributions have been made. Facilities-based network providers will likely incorporate

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[6] Comments of NYNEX at 2 - 5; Comments of SBC at 19 - 20; Comments of USTA at 5 - 6; Comments of BellSouth at 7.

[7] Second Report and Order, FCC 96-33 at ¶ 343.

[8] Id.

amounts contributed to number administration into their charges and pass them through to resale carriers. In the event that multiple levels of resale are involved, two or more contributions could ultimately be incorporated into charges paid by resale carriers.

Recognizing this problem with respect to regulatory fees, the Commission permitted initially just interexchange carriers,[9] and ultimately all interstate telephone service providers,[10] to "subtract from their gross interstate revenues . . . any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service."[11] It did so specifically to "avoid imposing a double payment burden on resellers."[12] As the Commission recognized, its funding approach to number administration is consistent with its assessment of regulatory fees.[13] It is also consistent with the method recommended by the Federal-State Joint Board for assessing funding obligations for universal service support,[14] and the method proposed by the Commission for recovering the costs of facilities shared by all carriers for the provision of number portability.[15]

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[9] Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, ¶ 135 (1995).

[10] Notice of Proposed Rulemaking, in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, FCC 96-153, ¶ 34 (released April 9, 1996).

[11] Id. at App. F, ¶ 32.

[12] Id.

[13] Second Report and Order, FCC 96-333 at ¶ 343, fn. 713.

[14] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3, ¶¶ 802 - 813 (released November 8, 1996).

[15] Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, FCC 96J-286, ¶¶ 212 - 214 (released July 2, 1996).

With respect to the recovery of shared number portability costs, the Commission tentatively concluded that "the recovery of the costs associated with [the number portability] databases should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers."[16] As the Commission explained:

> We also believe it is appropriate to subtract out charges paid to other carriers, such as access charges, when determining the relevant amount of each carrier's telecommunications revenues for purposes of cost allocation. This is because the revenues attributable to such charges effectively would be counted twice in determining the relative number portability costs each carrier should pay -- once for the carrier paying such charges and once for the carrier receiving them. . . . We believe that a reasonable, equitable, and competitively neutral measure of [the] benefit [of number portability] is each telecommunications carrier's gross telecommunications revenues minus charges to other telecommunications carriers.[17]

For much the same reasons, the Federal-State Joint Board recommended that universal service support fund contributions "be based on a carrier's gross telecommunications revenues net of payments to other carriers."[18] The Joint Board noted that "basing contributions on gross revenues net of payments to other carriers eliminates the 'double payment' problem."[19] The Joint Board also concluded that "basing contributions on gross revenues net of payments to other carriers is competitively neutral."[20] As the Joint Board explained:

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[16] Id. at ¶ 213.

[17] Id.

[18] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3 at ¶ 807.

[19] Id.

[20] Id. at ¶ 809.

> U S WEST argues that, in order to be competitively neutral, ILECs should also be allowed to make contributions based on their retail revenues. We disagree with U S WEST. Non-LEC carriers will not make contributions based on their retail revenues. Non-LEC carriers will make contributions based on the value of the services that they add to the PSTN, measured in terms of gross telecommunications revenues net of payments to other carriers. LECs will also make contributions based on the value of the services that they add to the PSTN. If the value of ILEC-added services generally equates to their gross revenues, this is not inequitable or discriminatory, because all contributing carriers will base their contributions in the same manner. ILECs should not be afforded special or different treatment when calculating their contributions. Thus, we find that basing contributions on gross revenues net of payments to other carriers is competitively neutral and easy to administer.[21]

The Joint Board also specifically rejected other cost recovery measures recommended by the ILEC Petitioner as inconsistent with the competitive neutrality standard and as administratively unworkable. Thus, the Joint Board concluded that reliance on retail revenues would not be competitively neutral because "it would relieve wholesale carriers from directly contributing to support mechanisms," in addition to being extremely difficult to administer.[22] The Joint Board also rejected "collecting contributions on non-revenue based measures, such as on a per-minute or per-line basis." These mechanisms, the Joint Board concluded, also "favor certain services or providers over others," as well as present administrative difficulties.[23]

In short, the Commission's approach to funding number administration fully satisfies the statutory competitive neutrality standard voiced in Section 251(c)(2), is consistent

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[21] Id.

[22] Id. at ¶ 811.

[23] Id. at ¶ 812.

with other cost recovery measures adopted or proposed by the Commission and the Federal-State Joint Board in implementing the 1996 Act, and is both equitable and workable.

B. The Commission Should Decline to Reconsider its Dialing Parity Mandates

The ILEC Petitioners urge the Commission to reconsider a number of key elements of the dialing parity requirements adopted by the Commission in implementing Section 251(c)(3) of the 1996 Act. Each of these recommendations has been previously raised before and rejected by the Commission and/or are singularly lacking in merit. All of these various proposals, accordingly, should be summarily rejected.

For example, Ameritech argues that an LEC's obligation to provide dialing parity (and nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings) "extends only to those other local exchange carriers that provide both telephone exchange service and telephone toll service."[24] While Ameritech asserts that this interpretation of Section 251(b)(3) reflects the "plain language of the statute," TRA submits that Section 251(b)(3) can just as easily be read to impose on LECs the obligation to provide dialing parity to competing providers of telephone exchange service and to competing providers of telephone toll service. As the Commission correctly points out, this latter reading is fully, indeed, more, consistent with the strongly-voiced intent of Congress to "encourage entry of new competitors in both the local and toll markets."[25] It would obviously make little sense to permit the Bell Operating Companies ("BOCs") into the long distance market purportedly as equal competitors

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[24] Comments of Ameritech at 2 - 5.

[25] Second Report and Order, FCC 96-333 at ¶ 68.

while preserving for them and a limited number of CLECs such a critical competitive advantage over all other long distance carriers. Finally, Ameritech's "impermissibly narrow reading" of Section 251(b)(3) does not comport with the distinction drawn by Section 271(c)(2)(B)(xii) between "local dialing parity" and the more expansive "dialing parity" required by Section 251(b)(3).[26]

SBC, USTA and GTE urge the Commission to "clarify" that the Section 51.209 carrier selection requirements[27] apply only to "new customers" that "begin subscribing to a telephone exchange service provider, such as an incumbent LEC, after implementation of presubscription" and not to existing customers.[28] TRA submits that the requested "clarification" is actually a significant modification which is wholly unwarranted. Section 51.209 of the Commission's Rules requires each LEC to implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically and prohibits the LEC from automatically assigning a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate toll carrier, or to any other carrier. Section 51.209 does not distinguish between "new" and "existing" customers and should not draw any such distinction. Such a distinction would provide ILECs with a massive competitive advantage achieved through simple inertia. As the Commission has properly held, customers "who fail affirmatively to select a provider of telephone toll service, after being given a reasonable opportunity to do so, should not

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[26] Id.; 47 U.S.C. § 261(c)(2)(B)(xii).

[27] 47 C.F.R. § 51.209.

[28] Comments of SBC at 2 - 6; Comments of USTA at 7 - 8; Comments of GTE at 4 - 7.

be assigned automatically to the customer's dial-tone provider or the customer's preselected interLATA toll or interstate toll carrier."[29] Such nonselecting customers, TRA agrees, "should dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until the make a permanent, affirmative selection."[30] Any other approach would significantly dampen intraLATA toll competition.

BellSouth, GTE, SBC and USTA all seek to delay or otherwise hinder the full deployment of dialing parity.[31] TRA strongly urges the Commission to resist all of these efforts as directly contrary to the public interest. As the Commission has found, "[t]he section 251(b)(3) dialing parity obligation will foster vigorous local exchange and long distance competition by ensuring that each customer has the freedom and flexibility to choose among different carriers for different services without the burden of dialing access codes."[32]

To speed these ends, the Commission directed LECs to submit to, and obtain approval from, state regulatory authorities detailed implementation plans setting forth deployment dates and presubscription methods.[33] Moreover, the Commission established a deployment schedule pursuant to which all LECs must provide interLATA and intraLATA toll dialing parity no later than February 8, 1999, but by August 8, 1997 if the LEC provides in-region interLATA

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[29] Second Report and Order, FCC 96-333 at ¶ 81.

[30] Id.

[31] Comments of SBC at 6 - 7; Comments of USTA at 11 - 12; Comments of GTE at 10 - 12; Comments of BellSouth at 5 - 6.

[32] Second Report and Order, FCC 96-333 at ¶ 22.

[33] Id. at ¶¶ 37 - 42.

or interstate toll service prior to that date or concurrent with the LEC's provision of in-region interLATA or interstate toll service if it commences such service after that date. The Commission further provided procedures for waiver of these deadlines upon a showing by an LEC of an inability to comply, but declined to give effect to state-granted deferrals, waivers or suspensions.[34]

Suggestions that the Commission does not have the authority to mandate deployment of dialing parity by February 8, 1999 are without merit given the broad authority granted the Commission under Section 251(d)(1) to implement the requirements of Section 251(b)(3).[35] Similarly, efforts to undermine state review of dialing parity plans based on allegations that the process will be "gamed" by competitors or state commissions should be rejected on the grounds that they are predicated on baseless speculation and conjecture and represent painfully transparent attempts to avoid regulatory scrutiny. Efforts to expand grounds for waiver of dialing parity deadlines to the point that any LEC would be able to qualify for such a waiver through inaction, creative accounting or strategic manipulation of facilities acquisition should likewise be rejected as directly contrary to the will of Congress. Waivers should be addressed on a case-by-case basis and held to a demanding standard of proof; cost considerations should not be adequate to warrant delay. Finally, attempts to deny the States the right to speed the availability of intraLATA/interLATA dialing parity unnecessarily undermines State authority without countervailing benefits.

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[34] Id. at ¶¶ 59 - 63.

[35] 47 U.S.C. § 251(d)(1).

C. The Commission Should Decline to Reconsider Its Nondiscriminatory Access Requirements

The ILEC Petitioners raise several objections to the nondiscriminatory access provisions of the Second Report and Order, none of which merits serious attention. For example, Ameritech claims that Section 251(b)(3) does not impose on LECs the obligation to provide access to telephone numbers, operator services, directory assistance, and directory listings which is equal in quality to that it provides itself; rather, Ameritech asserts, the Section 251(b)(3) nondiscrimination requirement mandates only that the LEC not discriminate among competing providers.[36] Ameritech's reading of Section 251(b)(3) in this respect is frivolous. The entire thrust of Title I of the 1996 Act -- indeed, the title of Part II of Title I -- is the "Development of Competitive Markets." Section 251 is designed to eliminate barriers to competition resident in local telecommunications markets. To suggest that Congress intended to exempt the entities that control the most formidable barriers to competition from the obligation to provide others with access to critical competitive elements that is at least equal in quality to that they provide themselves -- *i.e.*, to treat them in a nondiscriminatory manner -- is nonsensical.

SBC objects to the imposition on LECs of the burden of demonstrating in the event of a dispute with a competing provider that it has indeed provided nondiscriminatory access and that any disparity between the access provided to the competing provider and itself is not attributable to elements within its control. SBC complains that it is being unjustly required to

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[36] Comments of Ameritech at 7 - 11.

prove a negative[37] Apart from its mischaracterization of the burden imposed upon LECs by the Commission, SBC has no legitimate basis for objection to the imposition of that burden.

LECs are not required by the Commission to prove a negative; rather, they are required to demonstrate that they have provided competing providerse with access at least equal in quality to that they provide themselves.[38] Moreover, it is highly appropriate to impose the principal burden on LECs. Not only do LECs alone have access to all information necessary to satisfy the burden, but LECs are the parties with the primary incentives to violate the prescribed regulatory requirements.

Finally, the Commission should reject NYNEX's proposed clarifications of the operator branding requirements imposed by the Commission. TRA disagrees with NYNEX that "the timing of such branding or unbranding [should be] left to negotiation and/or state arbitration process."[39] Nor does TRA agree with NYNEX that an LEC should not be required "to unbrand its own operator services merely because it is not technically feasible to rebrand operator services for another carrier."[40] As the Commission has recognized:

> Brand identification is likely to play a major role in markets where resellers compete with incumbent LECs for the provision of local and toll service. This brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize consumer confusion. Incumbent LECs are advantaged when reseller end users are advised that the service is being provided by the reseller's primary competitor. We therefore conclude that

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[37] Comments of SBC at 9 - 10.

[38] Second Report and Order, FCC 96-333 at ¶¶ 13, 115, 121, 122.

[39] Comments of NYNEX at 15.

[40] Id.

> where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale.[41]

Consistent with these views, the Commission concluded in the Second Report and Order that "a providing LEC's failure to comply with reasonable, technically feasible requests of a competing provider for the providing LEC to rebrand operator services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers."[42] The Commission has permitted this presumption to be rebutted upon a demonstration by the providing LEC that it lacks the capability to comply with the competing provider's request.[43] It need do, and should do, no more.

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[41] First Report and Order, FCC 96-325 at ¶ 971.

[42] Second Report and Order, FCC 96-333 at ¶128.

[43] Id.

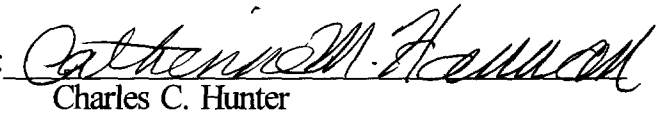
III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to reject to the extent noted herein the petitions seeking reconsideration of the Second Report and Order filed by Ameritech, BellSouth Corporation, GTE Service Corporation, NYNEX Telephone Companies, SBC Communications, Inc., and the United States Telephone Association.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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I, Jeannine M. Greene, hereby certify that copies of the foregoing document were mailed this 20th day of November, 1996, by United States First Class mail, postage prepaid, to the individuals listed on the attached service list.

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